

REMARKS

This Amendment is responsive to the Office Action mailed May 15, 2008. At the time of the Office Action, claims 37, 39-62 and 66-68 were pending, with claim 52 having been withdrawn from consideration.

With this Amendment, claims 37 and 66-68 have been amended. Support for the amended claims is found in the originally filed application, particularly at locations identified hereinafter. Accordingly, no new matter has been added.

An Information Disclosure Statement is being filed with this Amendment.

35 U.S.C. § 102 Rejection

Claims 37, 39-51 and 53-62 are rejected under 35 U.S.C. § 102(b) as being anticipated by Eggers et al., U.S. Patent No. 6,032,674. Applicant respectfully disagrees with the rejection.

Contrary to the Examiner's interpretation of Eggers et al., Eggers et al. does not teach or suggest a dimensional change sensor configured to move relative to the dimensional change of the tissue. While the device of Eggers et al. as a whole may move relative to the dimensional change of the tissue, the claims recite a dimensional change sensor configured to move relative to the dimensional change of the tissue. The dimensional change sensor of Eggers et al. itself is incapable of movement.

However, notwithstanding the previously noted deficiencies of the rejection here and in prior responses, Applicant has elected to amend the claims to expedite prosecution and further distinguish from the art.

In particular, claim 37 is amended to recite, among other things, a dimensional change sensor configured to engage the tissue and move relative to the dimensional change of the tissue. Example support for this limitation may be found at page 2, line 30 of the specification.

The ultrasonic transducer of Eggers et al. determines the thickness of the heart wall by measuring the delay time for reflected ultrasound signal to return from the boundary of the heart wall at the surface of epicardium. The delay time is then translated into a thickness of the heart

wall. (Col. 23, l. 19-28). As shown in the figures, the sensor does not engage the tissue and move relative to the dimensional change of the tissue. The use of ultrasound actually teaches away from a dimensional change sensor configured to engage the tissue, particularly as Eggers et al. is used to treat a beating heart.

At least in view of the foregoing remarks, it is respectfully submitted that claims 37, 39-51 and 53-62 are not anticipated by Eggers et al., the conditions of patentability have been satisfied, and the rejection should be withdrawn upon reconsideration.

35 U.S.C. § 103 Rejection

Claims 66-68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mulier et al., U.S. Patent No. 6,096,037, in view of Huitema et al., U.S. Patent No. 5,562,702. Applicant respectfully disagrees with the rejection.

Neither Mulier et al. nor Huitema et al. teach or suggest a dimensional change sensor configured to move relative to the dimensional change of the tissue. While Huitema et al. may recognize a need for certain sensors to be provided as part of a jaw assembly, Huitema et al. fails to disclose any such structure. Consequently, Huitema et al. merely recognizes a problem to be solved, but offers no solution to the problem.

However, notwithstanding the previously noted deficiencies of the rejection in prior responses, Applicant has elected to amend the claims to expedite prosecution and further distinguish from the art.

Similar to claim 37, Applicant has amended claims 66-68 to recite, among other things, a dimensional change sensor configured to engage the tissue and move relative to the dimensional change of the tissue.

Nothing in Huitema et al. teaches or suggests this limitation. Furthermore, neither Eggers et al nor Mulier et al. provides the teachings missing from Huitema et al. to maintain the rejection.

In view of the foregoing remarks, it is respectfully submitted that claims 66-68 are not unpatentable over Bommannan et al., in view of Mulier et al, the conditions of patentability have been satisfied, and the rejection of claims should be withdrawn upon reconsideration.

Summary

The Applicant respectfully submits that, in light of the foregoing amendments and remarks, and having dealt with all the rejections raised by the Examiner, the claims are in order for allowance. A Notice of Allowance is respectfully requested.

The Examiner is invited to contact the undersigned representative if it will facilitate prosecution of this application.

Respectfully Submitted,

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